

IN RE: PETITION FOR VARIANCE
E/S Dogwood Road, 350' S of
Powhattan Road
(5310 Dogwood Road)
1st Election District
2nd Councilmanic District
Anthony S. Braglio, Sr.
Petitioner

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 94-166-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a Petition for Variance filed for the subject property known as 5310 Dogwood Road, by its owner, Anthony S. Braglio, Sr. The Petitioner seeks relief from Section 409.G.A.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit 47 parking spaces in lieu of the required 71 spaces for an existing tavern in a B.L. zone, in accordance with Petitioner's Exhibit 9.

Mr. Braglio appeared on behalf of the Petition and was represented by George Psoras, Jr., Esquire. Appearing as Protestants in the matter were Stephen and Mary Fleagle and Nancy Masters, nearby residents of the area.

Testimony revealed that the subject property, known as 5310 Dogwood Road, consists of 1.209 acres, more or less, excluding the paper street which runs through the rear of the site. Said property is zoned B.L. and is improved with a 2,882 sq.ft. tavern, known as Ye Olde Millstream, which has existed on the site for the past 20 years. The Petitioner, who has owned the property for the past 7 years, is desirous of adding a 14' x 48' addition to the existing building to expand the storage area and to locate the recreational area of the bar therein. Mr. Braglio testified that he would like to relocate two pool tables and possibly add two

more pool tables to the proposed recreational area within the addition as well as add to existing storage space. Further testimony indicated the Petitioner is considering relocating a juke box, cigarette machine and drag racing machine to the proposed recreational area. At the hearing, I requested that Mr. Braglio submit a detailed floor plan of the proposed addition depicting the storage and recreational areas therein. Subsequent to the hearing, the Petitioner submitted a floor plan of the uses proposed, a copy of which shall be attached hereto and made a part hereof.

As to the requested variance, Mr. Braglio testified that his tavern operation is not such that additional parking is necessary. He testified that the only time the parking lot is filled to its maximum capacity is when he throws his annual Christmas Party during which free oysters and food are offered to the public. At all other times during the year, there are always plenty of parking spaces available for patrons. Furthermore, Mr. Braglio testified that he does not wish to expand the seating area of the bar into the proposed addition. He merely wishes to relocate the recreational area which, he believes, will provide a better layout of the facility for his patrons.

Further testimony revealed that in order to provide additional parking, an existing rocky hill to the rear of the property will have to be excavated. This hillside presently represents a nice buffer between the tavern use and the adjacent community on top of the hill. Mr. Braglio further noted that the cost of excavating this hill would be expensive as well as unsightly.

Appearing in opposition to the Petitioner's request were Stephen and Mary Fleagle and Nancy Masters, nearby residents of the area. The Fleagles testified that they are concerned about the traffic and noise

generated at closing time when patrons leave the subject property. They testified that on some occasions, they have been awakened by vehicles leaving the subject site and travelling down the road at high rates of speed. The Fleagles are also concerned that the proposed addition will be used to provide additional seating areas that will contribute to the noise currently generated by patrons at closing time.

Ms. Nancy Masters appeared on behalf of the Franklinton Community Association, Inc. Ms. Masters is a Board member of that Association. She testified that her Association is extremely concerned over the possible disturbance of the steep and wooded hillside located to the rear of the subject site. Ms. Masters stated that her Association is supportive of the variance requested for the reason that they would not want to see the hillside excavated. The Association is also of the opinion that the proposed addition should not be utilized as a bar, stage or public seating area for patrons. A letter dated October 29, 1993 stipulating their position was included in the file.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 27 Md. App. 28 (1974).

It is clear from the testimony that if the variance is granted, such use, as proposed, will not be contrary to the spirit of the B.C.Z.R. and will not result in any injury to the public good.

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship will result if the variance is not granted. It has been established that special circumstances or conditions exist that are peculiar to the land or structure which is the subject of this variance request and that the requirements from which the Petitioner seeks relief will unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the variance requested will not cause any injury to the public health, safety or general welfare. Further, the granting of the Petitioner's request is in strict harmony with the spirit and intent of the B.C.Z.R.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the variance requested should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 6th day of December, 1993 that the Petition for Variance requesting relief from Section 409.G.A.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit 47 parking spaces in lieu of the required 71 spaces for an existing tavern in a B.L. zone, in accordance with Petitioner's Exhibit 9, be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order;

ORDER RECEIVED FOR FILING
Date 12/15/93
By [Signature]

ORDER RECEIVED FOR FILING
Date 12/15/93
By [Signature]

ORDER RECEIVED FOR FILING
Date 12/15/93
By [Signature]

ORDER RECEIVED FOR FILING
Date 12/15/93
By [Signature]

- 2 -

- 3 -

- 4 -

however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.

2) The proposed addition shall be limited to those uses described on the floor plan marked as Exhibit A, a copy of which has been attached hereto and made a part hereof. There shall be no change in such use without a Petition for Special Hearing to determine the appropriateness of same.

3) The proposed addition shall be constructed of the same or similar materials used on the existing building.

4) When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.

[Signature]
TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



Suite 113 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

December 6, 1993

George Psoras, Jr., Esquire
608 Baltimore Avenue
Towson, Maryland 21204

RE: PETITION FOR VARIANCE
E/S Dogwood Road, 350' S of Powhattan Road
(5310 Dogwood Road)
1st Election District - 2nd Councilmanic District
Anthony S. Braglio, Sr. - Petitioner
Case No. 94-166-A

Dear Mr. Psoras:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Variance has been granted in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

Very truly yours,

[Signature]
TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

cc: Mr. & Mrs. Stephen Fleagle
5326 Dogwood Road, Baltimore, Md. 21207

Ms. Nancy Masters
1814 N. Forest Park Avenue, Baltimore, Md. 21207

People's Counsel

[Signature]

Petition for Variance
to the Zoning Commissioner of Baltimore County
for the property located at 5310 DOGWOOD ROAD, BALTIMORE, MD 21207
which is presently zoned B.L.

The undersigned, legal owner(s) of the property situated in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 409.G.A.2 TO ALLOW A TOTAL OF 47 PARKING SPACES IN LIEU OF THE REQUIRED 71 SPACES FOR AN EXISTING TAVERN (EXISTING) IN A B.L. ZONE.

In order to achieve the additional parking spaces required by code, a cliff/hill would have to be excavated. The excavation would be extensive, involving the use of explosive devices/materials in order to move massive amounts of rock. These explosives pose a hazardous threat to the environment, as well as other property owners in the area.

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Current Petitioner/Leasee:

N/A

(Type or Print Name)

Signature

Address

City

State

Zip

Attorney for Petitioner:

N/A

(Type or Print Name)

Signature

Address

City

State

Zip

With no existing division and affirm, under the penalties of perjury, that they are the legal owner(s) of the property which is the subject of this Petition.

Legal Owner(s)

Anthony Scott Braglio, Sr.

[Signature]

(Type or Print Name)

Signature

Address

City

State

Zip

Phone No.

5310 Dogwood Road

Baltimore, MD 21207

410-750-9046

410-265-8224

Anthony Scott Braglio, Sr.

[Signature]

5310 Dogwood Road

Baltimore, MD 21207

410-750-9046

410-265-8224

Anthony Scott Braglio, Sr.

[Signature]

5310 Dogwood Road

Baltimore, MD 21207

410-750-9046

410-265-8224

Anthony Scott Braglio, Sr.

[Signature]

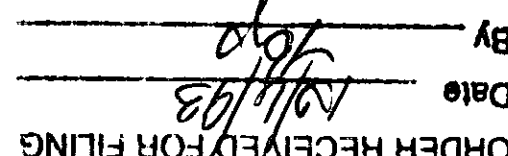
ORDER RECEIVED FOR FILING
Date 12/15/93
By [Signature]

ORDER RECEIVED FOR FILING
Date 12/15/93
By [Signature]

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Baltimore County Office of Juvenile
Administration & Development Management
Development Control
111 West Chesapeake Avenue
Room 209
Towson, MD 21204
Telephone: (301) 221-1391



Enclosure

Ernest Ingham

Mark Plogman
5203 Pleasant St.

RECEIVED
NOV 8 1993
ZADM

x) Nancy J. Martin
10-29-93

We, the undersigned, acknowledge and accept that Anthony Scott Braglio, known as owner of 5310 Dogwood Road, has applied to the zoning commission of Baltimore County for a variance to make an exception regarding the required number of parking spaces in accordance with the square footage of the building, including the proposed addition.

We, the undersigned have no objections to the proposed addition or the proposed parking variance. As resident property owners in the immediate Baltimore County area for a period of five (5) years or more, our signatures below confirm that Anthony Scott Braglio has our support and approval to pursue the construction of the addition at 5310 Darnest Road, as proposed.

Furthermore, the business located at 5310 Dogwood Road has been owned and operated by Anthony Scott Braglio since 1987 in a reputable business-like manner with respect and consideration of our property and our interests as resident property owners in the immediate area.

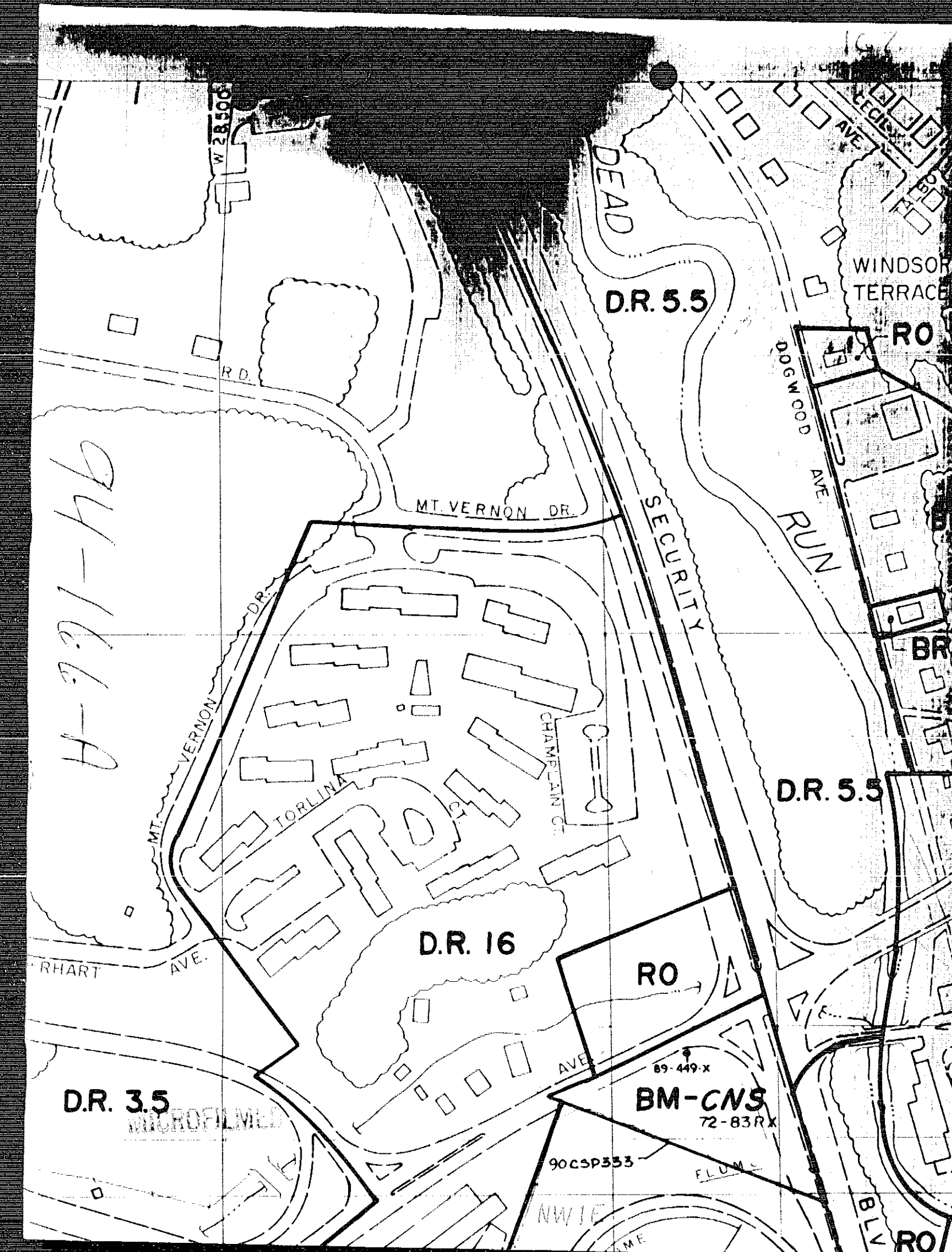
[illegible]

NAME	ADDRESS
Stephen & Mary Fleagle	5326 Dogwood Rd. Bath. 2/20/7
Mary Martin	1814 N Forest Park Ave 2/12/7

PLEASE PRINT CLEARLY

<u>NAME</u>	<u>PETITIONER(S) SIGN-IN SHEET</u>	<u>ADDRESS</u>
George PSORAS, Jr.		608 Baltimore Ave
Enrique		Towson, MD 21204
Scott DeRotho		3094 Hollywood Rd
Jeff Howard Rd		Woodstock Md 21163

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears to be from a notebook or a standard ruled sheet of paper. There is no handwriting or other markings on the page.



IN THE MATTER OF
THE CHOOSING OF A PORTION
OF SPRING STREET
(1st Election District)

WHEREAS, the Petitioner, Anthony Scott Bowditch, Sr. petitioned to close a portion of Spring Street, in the 1st Election District of Baltimore County, Maryland; and

WHEREAS, a Notice of said closing was published in a local Baltimore County newspaper for three consecutive weeks giving notice of publication of the intention to close said road; and

WHEREAS, the Petitioner has caused notice to be served on all abutting property owners; and

WHEREAS, a hearing as set forth in the advertisement hereinbefore referred to was held on Tuesday, September 28, 1993, at 10:00 A.M. in the Office of the County Attorney, Second Floor, Old Courthouse, Towson, Maryland, for the purpose of receiving objections and

WHEREAS, the County Hearing Officer has found that a portion of Spring Street is no longer necessary for public travel,

NOW, THEREFORE, it is this 14th day of June, 1957, at
Baltimore County, Maryland,

ORDERED, that the hereinbelow described portion of Spring Street, and as shown on attached Exhibit A and made a part hereof, be, and the same is hereby closed as follows:

[illegible][illegible]

CERTIFICATE OF PUBLICATION

TOWSON, MD. _____ May 18, 1967.

THIS IS TO CERTIFY that the enclosed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published at Towson, Baltimore County, Md., ~~unlawfully~~ legally on _____ day of _____, 1967, at _____ o'clock _____ day of _____, 1967, the said publication appearing on the _____ day of _____, 1967.

W. L. LEACH, Publisher

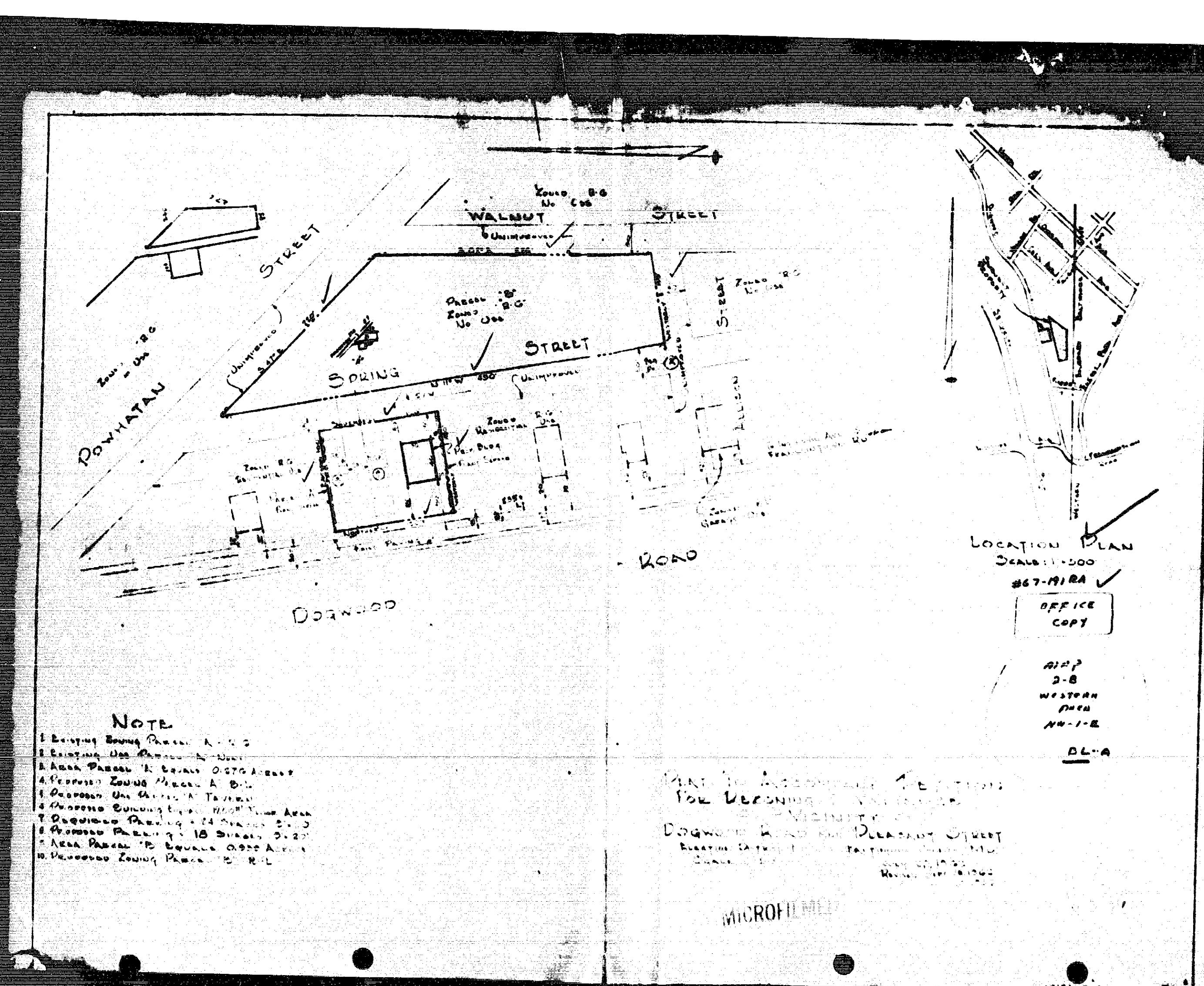
(not of Advertisement.) _____

CERTIFICATE OF PUBLICATION

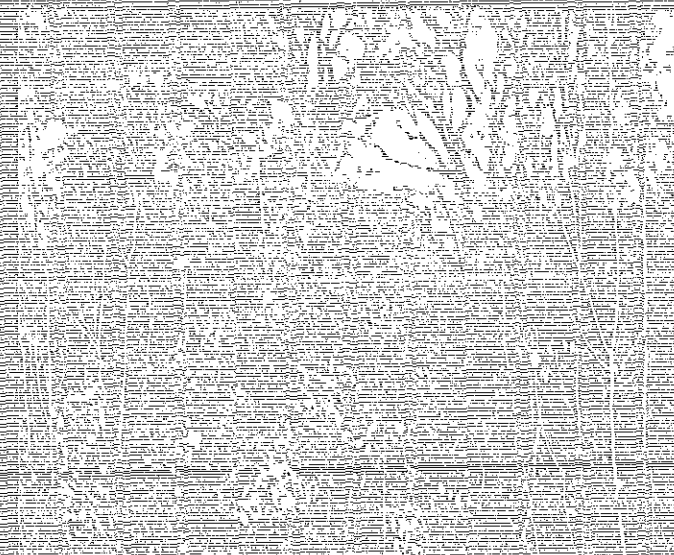
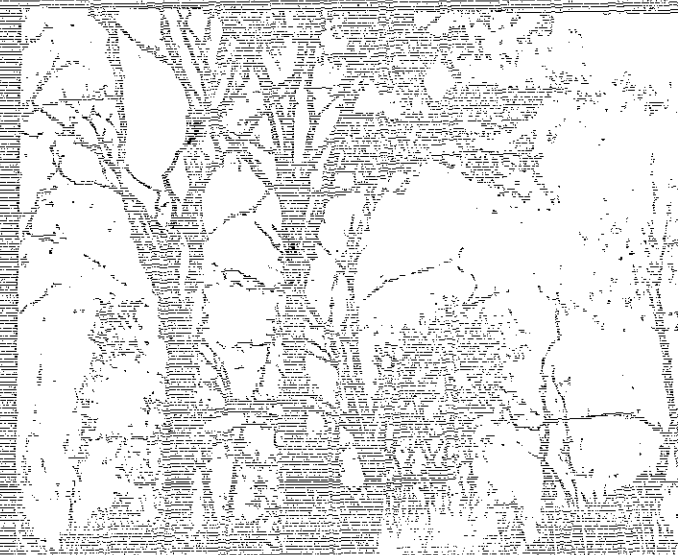
THIS IS TO CERTIFY, That the
published in THE SUPERHERMAN,
and published by Vernon, Baltimore,
M.D., U.S.A.
day of _____ A.D.,
appearing at the _____ day of
19 ____.

L. L. Lewis

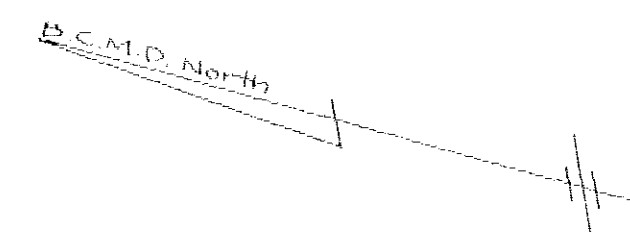
Cost of Advertisement, \$.....



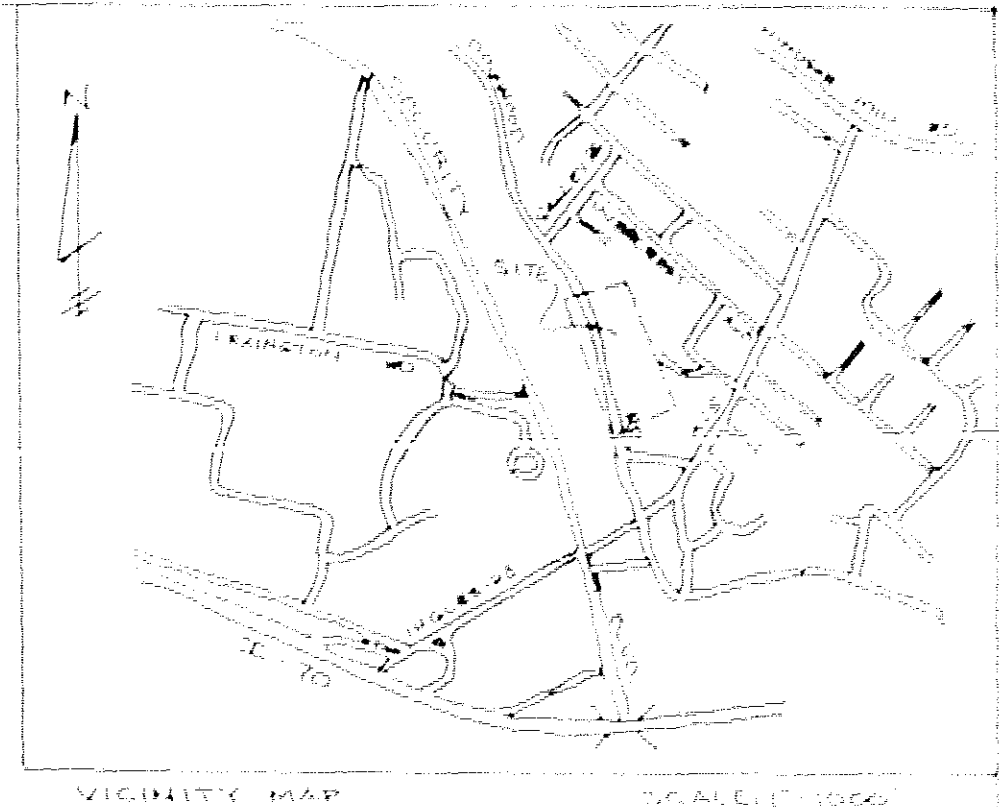
Notes
 1. 1/16/73
 2. 1/16/73



PROPERTY COORDINATES	
NO.	COORDINATES
1	3397.62
2	3423.54
3	3444.27
4	3332.44
5	3344.56
6	3422.52
7	3511.24
8	3104.53



94-166-A



- NOTES
1. Area 1.229 Ac. Sub. including Spring A. & B.
 2. Zoning B. (Res. H. & L.)
 3. Owner: Anthony Scott Bragg & Son
 4. Tax Account # 01-19-1973
 5. Deed Sub. Liber #156 P. 1 & 2
 6. Tax Map # 55 Grid 10 Block 41
 7. Census Tract 402
 8. Regional Planning Unit 4-1-2
 9. Watershed Dist. 20
 10. Sub. Sewerage # 53
 11. This property is not located in the critical Bay Area
 12. Coordinates and bearings are given on State Cal. Traverse stations: 10770 N. 51°09'44" W. 2734.50; 14582 N. 26°06'21" W. 2123.50
 13. Elevation 12 ft.
 14. County Map Dist. 2
 15. Parking Spaces required 71 (357,000 sq. ft.) Spaces provided 47
 16. Zoning Variance # 21-11-73 a zoning is instead of 24 parking spaces. Dis. tavern road. San construction of new tavern in 1973
 17. Previous Commercial Permit for existing bldg. since 1973
 18. All signs comply with section 4-13 of B.C.Z. and all zoning policies
 19. Floor area ratio 0.0675 (360 sq. ft.)
 20. Any future use to be arranged as to prevent the light away from adjacent residential sites and public streets
 21. Present use is Tavern

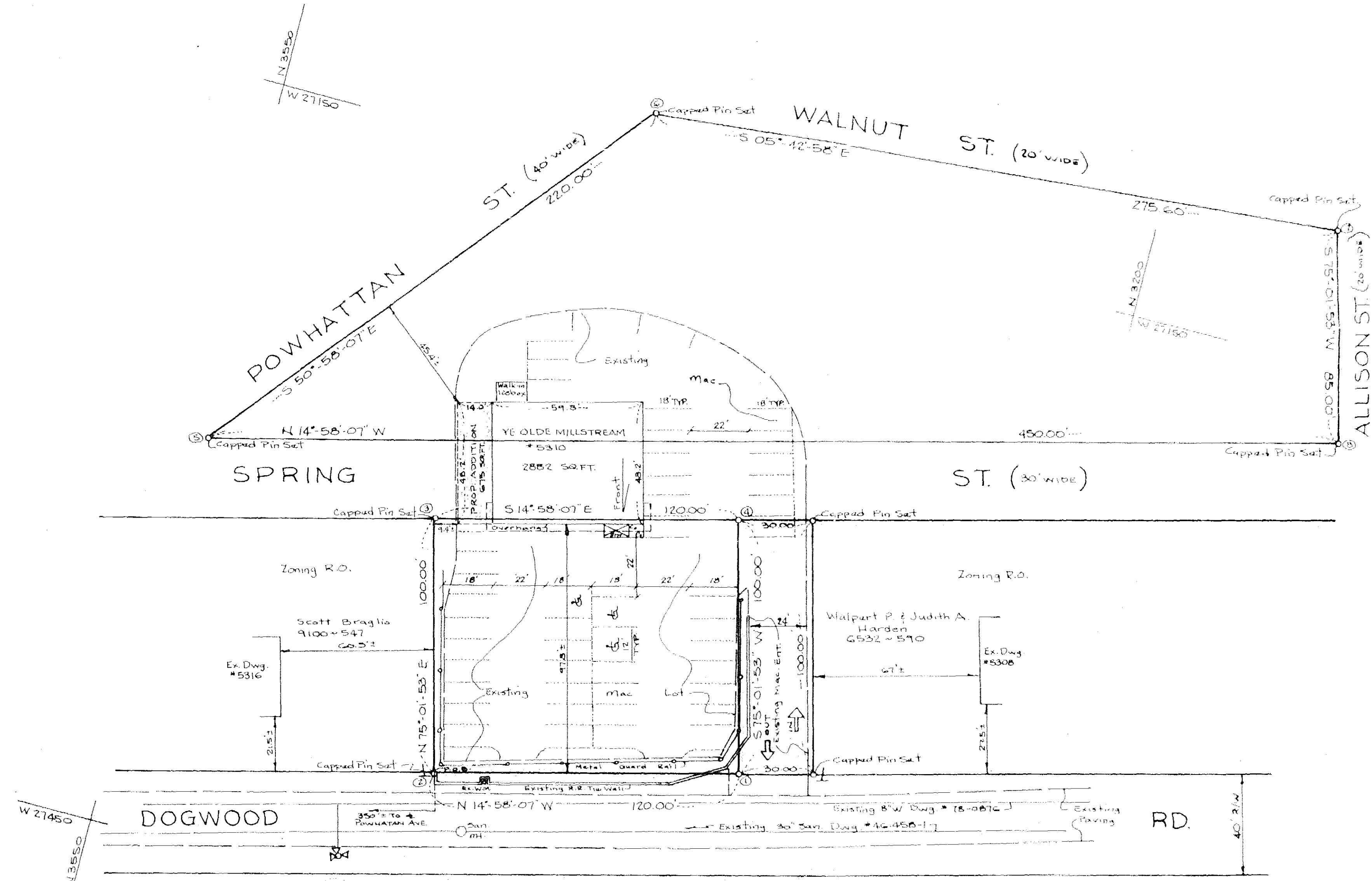


EXHIBIT NO. 9

#167

PLAT TO ACCOMPANY PETITION
 FOR ZONING VARIANCE
 5310 DOGWOOD RD.
 Scale: 1"=30' Oct. 1973

Leonard J. Buntant 7/18/73
 Registered Property Line Surveyor No. 349

